burger (1900) 107 Ky. 469, 54 S. W. 829. Courts are not in agreement as to the degree of relationship required. But an apparent exception is made in the case of a message summoning a physician when there is a relationship between the sender and the person ill. *Western Union Tel. Co.* v. *Cavin* (1902) 30 Tex. Civ. App. 152, 70 S. W. 229; *Western Union Tel. Co.* v. *Haley* (1903) 143 Ala. 586, 39 So. 386. Respecting the intended parties to the message, recovery would have been possible in the instant case, but for the requirement that to hold the company liable, it must be charged with notice of the nature and urgency of the message. *Darlington* v. *Western Union Tel. Co.* (1900) 127 N. C. 448, 377 S. E. 479. In the principal case the court did not insist on such notice, on the ground that it was not the function of the telephone company to deliver the message, but merely to connect the wires. This reasoning seems unsatisfactory. To justify the result in the instant case on the ground of failure to establish notice, would harmonize better with the established limitations upon the unusual doctrine of mental anguish.

TORTS—INFANTS—ACTION FOR PRENATAL INJURIES.—The plaintiff's mother while walking along the public sidewalk during pregnancy fell through a coal hole, which had been negligently left open by the defendant. As a consequence the plaintiff while yet unborn was injured for life. *Held,* on demurrer, that the plaintiff could recover. *Drobner* v. *Peters* (App. Div. 1st Sept. 1920) 64 N. Y. L. J. 1503.

The instant case is an interesting and commendable development of the law. Heretofore the courts have universally held that an infant could not recover for prenatal injuries. (1913) 13 COLUMBIA LAW REV. 359 (where this point is fully discussed). The basis of these decisions is that the unborn child is not a separate entity and hence it is a fiction to treat it as a person *in esse.* But this reasoning falls short since the unborn child has already been considered a separate being in so many analogous cases in the law. (1913) 13 COLUMBIA LAW REV. 359. Bogg, J., in the dissenting opinion in *Allaire* v. *St. Luke's Hospital* (1900) 184 Ill. 359, 56 N. E. 638, 641, suggested that to avoid this fiction recovery should be allowed if, at the time of the injury, the child was capable of being born viable. See *Lipps* v. *Milwaukee Electric Ry. & Light Co.* (1916) 164 Wis. 272, 159 N. W. 916, 917. This rule, however, would raise the further difficulty of determining when a child could be born viable and also lead to the injustice of denying recovery to many infants, who, under the rule in the principal case, would be able to recover. The decision in the instant case is the logical result of *Nugent* v. *Brooklyn Heights R. R.* (1913) 154 App. Div. 667, 139 N. Y. Supp. 367, where the court denied recovery on the ground that the unborn child was not a passenger to the knowledge of the defendant, but apparently would have allowed recovery if the defendant had not been a carrier. It is to be hoped that the principal case will be upheld on appeal and followed in other jurisdictions.

TRIAL—SUBSTITUTION OF JUDGES.—In a prosecution for burglary, the presiding judge retired because of illness after hearing part of the evidence, and was replaced by another judge of the same county. The second judge finished the trial and instructed the jury, which declared the defendant guilty. No objection was made to the procedure until the trial was concluded, when the defendant raised this irregularity on a motion for a new trial. The Iowa Code provides for the exchange of judges, but does not expressly permit the substitution of one judge for another during the course of a trial. *Held,* one judge dissenting, such a change was permissible, there being no prejudice to the defendant, particularly since the defendant did not object at the time the substitution was made. *State* v. *McCray* (Iowa 1920) 179 N. W. 627.

In criminal cases a defendant may insist that the same judge preside from